

assassination of President Clinton during a fund-raising visit to Portland by extremists. A plan is devised to infiltrate an informant into the suspected circle of conspirators with an electronic recording device to forestall the villainy. It would be frustrated by Oregon's disciplinary code coupled with the McDade law.

Federal terrorism investigations or prosecutions are likewise jeopardized in Oregon. Suppose a terrorist suspect pleads guilty to a federal conspiracy offense and agrees to cooperate in the apprehension and trial of co-conspirators in exchange for a lenient sentence. The United States Attorney contemplates the terrorist-informant's use of an electronic recording or transmitting device to prove the guilt of the conspirators from their own words. The U.S. Supreme Court held in *United States vs. White* (1971) that such investigatory deceit is no affront to the Constitution, and added: "An electronic recording will many times produce a more reliable rendition of what a defendant has said than will the unaided memory of a police agent. It may also be that with the recording in existence it is less likely that the informant will change his mind, less chance that threat or injury will suppress unfavorable evidence, and less chance that cross-examination will confound the testimony."

Under the McDade law in Oregon, however, the United States Attorney would be required to forgo his impeccable plan for electronic monitoring to ensnare a nest of terrorists.

Its mischief is not confined to these troublesome hypotheticals, but handcuffs the investigation of every federal crime and has thrown a spanner in real cases. The FBI initiated an "Innocent Images" investigation in Portland spurred the burgeoning problem of child pornography and exploitation in Oregon. The United States Attorney shut down the operation because fearful that the involvement of undercover agents and the monitoring of telephone calls with the consent of but one party could be deemed deceitful by the State Bar.

During a recent Oregon drug trafficking investigation, the FBI located a cooperating witness willing to use an electronic monitoring device to record the conversations of drug trafficking suspects. The United States Attorney nixed the idea because of the McDade law.

In 1980, the FBI's Abscam investigation employed undercover agents to implicate six House members and one senator in corruption. One videotape captured Rep. John W. Jenrette Jr., South Carolina Democrat, confessing to an agent, "I've got larceny in my blood." Abscam would have been problematic if the McDade law had then been in effect.

A recurring impediment in all states are codes that prohibit federal attorneys and their agents from contacting and interviewing corporate employees without the consent and presence of corporate counsel. In California, the FBI's investigation of Alaska Airlines maintenance records through separate interviews of employees was thwarted by a company attorney's claiming to represent all. After a Jan. 31, 2000, crash of an Alaska Airlines jet killing everyone on board, FBI agents were blocked from questioning ground mechanics for the same reason. Sen. Leahy, a former seasoned prosecutor, lamented: "[T]hose interviews that are most successful simultaneous interviews of numerous employees could not be conducted simply because fear that a [state] ethical rule . . . might result in proceedings against the prosecutor."

The Supremacy Clause of Article VI of the Constitution that when legitimate federal interests are at stake, state law should bow. It was underscored by the Supreme Court's ruling in *In re Neagle* (1890), which denied California authority to prosecute a federal deputy marshal for killing an attacker in the course of defending Supreme Court Justice Stephen J. Field.

An ethics code to ensure that federal government attorneys turn square corners is admittedly necessary. But shouldn't it be drafted by federal authorities sensitive to federal needs rather than consigned to the whims of 50 different states?

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FEDERALLY SPEAKING, A FINE KETTLE OF FISH

(By Chitra Ragavan)

Two Octobers ago, Congress passed a funny little law. It was named after its sponsor, Pennsylvania Republican Joseph McDade, but for the congressman, there was nothing funny about it. The Justice Department had spent eight years investigating McDade on racketeering charges. He was finally acquitted by a jury in 1996, but by then McDade's health and spirits were broken. The McDade bill was his payback to Justice. It simply requires federal prosecutors to comply with state ethics laws.

No big deal? Not quite. In August, the Oregon Supreme Court forbade all lawyers in the state to lie, or encourage others to lie, cheat, or misrepresent themselves. Under McDade, the ruling now applies to Oregon's federal prosecutors. "We've handcuffed the agents," says senior FBI official David Knowlton, "not the criminals." The U.S. attorney for the Oregon district, Kristine Olson, has informed the FBI and other federal investigative agencies that she cannot OK agents or informants to assume false identities, wear body wires, or engage in undercover activities. "In effect," says David Szady, special agent in charge of the FBI's Portland office, "we now have to go to a drug dealer and say, 'FBI! Would you sell us some drugs, please?'" The FBI, Szady says, has had to suspend 50 investigations, including probes of Internet child pornographers, a Russian organized-crime group, and a massive check-fraud ring.

Federal prosecutors despise the McDade law. David Margolis, a senior Justice Department official and a veteran organized-crime prosecutor, says McDade has had a major chilling effect. "Even I wouldn't go out on a limb," he says. Justice officials are trying to gut the law before Congress goes out of session this week. The department warned lawmakers in 1998 that prosecutors would be lost in a morass of quirky state ethics laws—especially during complicated multistate investigations. But defense lawyers won the day. "Why should prosecutors be exempt from rules that apply to all other lawyers in that state?" says Mark Holscher, lawyer for former Los Alamos scientist Wen Ho Lee. So far, no court has dismissed a case or excluded evidence on the basis of McDade. "These are crocodile tears," says veteran defense lawyer Irv Nathan.

Major headache. The biggest headache for prosecutors is the American Bar Association's controversial Model Rule 4.2, adopted by many states. It prohibits prosecutors from contacting people represented by lawyers without first talking to the attorneys. Remember when Kenneth Starr's prosecutors ignored Monica Lewinsky's tearful entreaties to call her lawyer? They got away

with it because, since 1989, Justice had defied Rule 4.2.

No more. Prosecutors now say adhering to 4.2 has hurt white-collar probes, where securing the cooperation of informers is often vital. In an investigation of Alaska Airlines last year, company lawyers barred federal agents from questioning employees. Sen. Patrick Leahy of Vermont says, "The pendulum has swung too far in the other direction." But House Judiciary Committee Chairman Henry Hyde of Illinois says he's not inclined to repeal McDade. "That doesn't mean I'm for crooks," Hyde says. "I'm for ethical behavior both by law enforcement and by defense counsel." Watching the fight from the sidelines in Joe McDade, now 69. "I didn't read about it. I lived it," he says, of prosecutorial zealotry. "The effort is not justice. The effort is to break a citizen."

STUDENT PLEDGE AGAINST GUN VIOLENCE

Mr. LEVIN. Mr. President, on Tuesday, thousands of young people observed the Fifth Annual Day of National Concern About Young People and Gun Violence. Students across the country who participated in the day's activities were given the chance to make a strong statement renouncing the violent use of guns by signing a voluntary pledge.

In my own State of Michigan, high school senior Vince Villegas of Lansing worked to ensure that the anti-gun violence pledges were distributed to students in his own school district. Vince is the co-founder and current president of Students Against Firearm Endangerment, SAFE, USA, an organization whose mission is to reduce the number of gun casualties by increasing gun education in America's schools. With help from students like Vince, more than one million young people have signed the Student Pledge Against Gun Violence during this year alone.

Here is what that pledge says: "I will never bring a gun to school; I will never use a gun to settle a dispute; I will use my influence with my friends to keep them from using guns to settle disputes. My individual choices and actions, when multiplied by those of young people throughout the country, will make a difference. Together, by honoring this pledge, we can reverse the violence and grow up in safety."

Vince and students like him around the country have pledged to do what they can to reduce the toll of gun violence in their lives. Now it's up to Congress to learn from our young people and pledge to combat the gun violence that plagues the Nation's schools and communities.

VICTIMS OF GUN VIOLENCE

Ms. MIKULSKI. Mr. President, it has been more than a year since the Columbine tragedy, but still this Republican Congress refuses to act on sensible gun legislation.